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11 Attorneys for Plaintiff PRAGER UNIVERSITY

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION  
15

16 PRAGER UNIVERSITY,

17 Plaintiff,

18 vs.

19 GOOGLE LLC, a Delaware limited liability  
company, YOUTUBE, LLC, a Delaware  
20 limited liability company, and DOES 1-25,

21 Defendants.  
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Case No. 5:17-cv-06064-LHK

**REPLY IN SUPPORT OF REQUEST FOR  
JUDICIAL NOTICE**

Judge: Hon. Lucy H. Koh  
Date: March 15, 2018  
Time: 1:30 p.m.  
Crtrm.: 8, Fourth Floor  
Robert F. Peckham Federal  
Courthouse  
280 S. First Street  
San Jose, CA 95113

Trial Date: None Set

1 Plaintiff respectfully submits this Reply in response to Defendants Google LLC and  
 2 YouTube, LLC's ("Defendants") Opposition to Plaintiff's Request for Judicial Notice (Dkt. #40)  
 3 ("RJN Opp."), filed on February 23, 2018.

4 **RESPONSE TO DEFENDANTS' OPPOSITION TO RJN**

5 Defendants object to PragerU's Request for Judicial Notice (DKT #35) on the grounds that  
 6 the complaint filed by James Damore and David Gudeman (the "*Damore* complaint"), including  
 7 exhibits containing e-mails and internal message board posts by Google employees, is: (i)  
 8 irrelevant because the emails have no connection to YouTube (RJN Opp. 1:5-8); and (ii) contains  
 9 allegations the truth of which cannot be judicially noticed (RJN Opp. 1:9-24). PragerU  
 10 respectfully disagrees because, absent a claim that such communications are not authentic, they  
 11 are statements and admissions made by Defendants' employees relevant to the workplace bias and  
 12 culture in which Google/YouTube employees operate, including those employees who manually  
 13 review videos for compliance with Community Guidelines and other purportedly viewpoint-  
 14 neutral content restrictions.

15 As to Defendants' corporate form argument, Google is a named defendant in this case,  
 16 Google Policies are incorporated into YouTube's policies, and Google is alleged to participate  
 17 with YouTube in regulating and restricting speech on the YouTube platform. Compl. ¶¶ 18-19,  
 18 35; Willen Dec. iso MTD Ex. 1 (Dkt #32-1). Just as its policies are expressly incorporated into  
 19 YouTube's Terms of Use, its management and culture influence YouTube's employees, including  
 20 its CEO who is a former Google executive. Defendants are free to submit evidence showing that  
 21 employees at YouTube are not influenced, controlled by, or subject to Google's culture that  
 22 permeates Defendants' operations, as evidenced by those emails and internal communications. At  
 23 best, the argument goes to the weight accorded to such matters, not whether they should be  
 24 judicially noticed.

25 Defendants' other contention that PragerU's Request for Judicial Notice asks this Court to  
 26 take notice of the truth of unproven allegations in the *Damore* complaint is misplaced. While  
 27 Defendants are correct that the allegations in the *Damore* complaint itself are unproven and cannot  
 28 be taken as true, Plaintiff is asking only that this Court take notice of the attached messages and

1 emails by Google employees that are attached as exhibits to and referenced in the *Damore*  
 2 Complaint. MTD Opp. at 4:25-5:3. Those are party admissions that are directly relevant to the  
 3 issue of viewpoint discrimination, which Defendants put in issue by arguing that Plaintiff has not  
 4 sufficiently alleged intentional discrimination. *See 5-Star Mgmt. v. Rogers*, 940 F.Supp. 512, 518-  
 5 19 (E.D.N.Y. 1996) (taking judicial notice of party admission in other lawsuit on central issue in  
 6 motion to dismiss); *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 454 F.Supp.2d 966  
 7 (C.D. Cal. 2006) (company employee statements are party admissions); Defendants' Notice of  
 8 Motion and Motion to Dismiss, Dkt. #31, 5:18-19; 6:2-3; 6:17-18. And, even if the Court declines  
 9 to consider such matters in connection with Defendants' Motion to Dismiss, Plaintiff requests that  
 10 this Court consider them when ruling on Plaintiff's Motion for Preliminary Injunction. *E.g.*,  
 11 *Prepaid Teleconnect, Inc. v. City of Murrieta*, 2016 WL 1622609, \*3 (C.D. Cal. April 21, 2016)  
 12 (considering party admissions in ruling on preliminary injunction motion); *F.T.C. v. John Beck*  
 13 *Amazing Profits LLC*, 2009 WL 7844076, \*1 (C.D. Cal. Nov. 17, 2009) (same).

14 Finally, as PragerU explained in its Opposition to Defendants' Motion to Dismiss, the  
 15 Court can consider the emails in determining whether to grant PragerU leave to amend the  
 16 Complaint. MTD Opp. 5 n.1. Thus, even if the Court accepts Defendants' pleading argument that  
 17 the Complaint has not sufficiently alleged intentional discrimination, Plaintiff submits that this  
 18 Court may consider such matters in determining whether to grant leave to amend or, for efficiency  
 19 purposes, consider them as proposed amendments to the Complaint that respond to and negate  
 20 Defendants' assertion that there is no evidence of animus or discrimination in its algorithms,  
 21 workplace, or culture.

## 22 CONCLUSION

23 For the reasons set forth above, as well as those stated in Plaintiff's Request for Judicial  
 24 Notice, Plaintiff respectfully Requests that the Court take judicial notice of Defendants'  
 25 admissions referenced in and attached to the *Damore* Complaint. In the alternative, PragerU

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1 respectfully requests that the Court consider them in conjunction with PragerU's Complaint and/or  
2 further evidence in support of its Motion for a Preliminary Injunction.

3  
4 Dated: March 1, 2018

Respectfully submitted,

5 BROWNE GEORGE ROSS LLP

6 Peter Obstler  
7 David S. Wakukawa

8  
9 By: /s/ Peter Obstler

Peter Obstler

10 Attorneys for Plaintiff PRAGER UNIVERSITY  
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**CERTIFICATE OF SERVICE**

**Prager University v. Google Inc., YouTube, LLC and Does 1-25**  
**Case No. 5:17-cv-06064-LHK**

**STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 101 California Street, Suite 1225, San Francisco, CA 94111.

On March 1, 2018, I served true copies of the following document(s) described as

**REPLY IN SUPPORT OF REQUEST FOR JUDICIAL NOTICE**

on the interested parties in this action as follows:

United States District Court – ND CA  
Hon. Lucy H. Koh  
Courtroom 8, 4th Floor  
280 South First Street  
San Jose, CA 95113

David Kramer and Brian Willen  
Wilson Sonsini Goodrich & Rosati, P.C.  
Email: DKramer@wsgr.com  
Email: bwillen@wsgr.com

CHAMBERS COPIES (by U.S. Mail) *Counsel for Defendants*  
*Google LLC and YouTube, LLC*

**BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 1, 2018, at San Francisco, California.

/s/ Christine Coopey  
Christine Coopey